IN THE HIGH COURT OF JUDICATURE OF BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL NO.1114 of 2005

IN

NOTICE OF MOTION NO.2775 OF 2005

IN

ARBITRATION PETITION(L) 286 OF 2005

Essar Steel Limited .. Appellant

versus

DLF Universal Limited .. Respondent

...

Mr.Janak Dwarkadas a/w Mr.Birendra Saraf i/b M/s.Khaitan & Jayakar for the appellants.

Mr.F.E.D'vitre, Mr.Pesi Mody and Mr.Kamal Buddhiraja i/b Mr.Anil Agarwal for the respondent.

CORAM : R.M. LODHA AND

D.G. KARNIK, JJ

DATED : 20th December 2005.

P.C.:

Mr.Janak Dwarkadas, the learned Senior Counsel for the appellant heavily relied upon paragraph nos.7 and 11 of the judgement of the Supreme Court in the case of India House Versus Kishan N. Lalwani, (2003) 9 SCC 393 and submitted that the judgement of this Court in the case of H.M.P. Engineers Ltd. & ors. versus Ralies India Ltd and others, 2003(4) Mh.L.J. 931 requires consideration.

2. The Division Bench in the case of H.M.P. Engineers Limited was seized with the question whether the provisions of section 14 of the Limitation Act 1963 were applicable to an application challenging an award under section 34 of the Arbitration & Conciliation Act, 1996.

3. The Division Bench referred to the various judgements of the Supreme Court including the judgment in the case of Union of India Vs. Popular Construction Co., (2001) 8 SCC 470 and held thus :

> 13. Apart from the language, "express exclusion" may follow from the scheme and object of the special or local law:
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> . Even in a case where the special law does not exclude the provisions of Sections 4 to 24 of the Limitation Act by an express reference, it would nonetheless be open to the court to examine whether and to what extent the nature of those provisions or the nature of the subject-matter and scheme of the special law exclude their operation"

4. Thus, there is direct judgement of the co-ordinate Bench of this Court that the provisions of section 14 of the Limitation Act 1963 are not attracted in filing the petition under section 34 of the Act of 1996.

5. In paragraph nos.7 and 11, the Supreme Court in the case of India House held thus:

> 7. It is well settled that by virtue of sub-section (2) of Section 29 of the Limitation Act the provisions of Section 12 are applicable for computing the period of limitation prescribed by any special or local law. The period of limitation statutorily prescribed has to be strictly adhered to and cannot be relaxed or departed from for equitable considerations. At the same time full effect should also be given to those provisions which permit extension or relaxation in computing the period of

limitation such as those contained in Section 12 of the Limitation Act. The underlying purpose of these provisions is to enable a litigant seeking enforcement of his right to any remedy to do so effectively and harsh prescription of time bar not unduly interfering with the exercise of statutory rights and remedies. That is why Section 12 has always been liberally interpreted. To wit, the time requisite for obtaining a copy of the impugned decree, sentence or order has been held liable to be excluded from computing the period of limitation although such copy may not necessarily be required to be filed along with the appeal, application or memo of representation or review. No distinction is drawn between decrees or orders pronounced on the original side or the appellate or revisional side. No application is required to be made seeking the benefit of Section 12 of the Limitation Act; it is the statutory obligation of the Court to extend the benefit where available. Although the language of sub-section (2) of Section 12 is couched in a form mandating the time requisite for obtaining the copy being excluded from computing the period of limitation, the easier way of expressing the rule and applying it in practice is to find out the period of limitation prescribed and then add to it the time requisite for obtaining the copy - the date of application for copy, and the date of delivery, thereof both included - and treat the result of addition as the period of limitation. The underlying principle is that such copy may or may not be required to accompany the petition in the jurisdiction sought to be invoked yet to make up one’s mind for pursuing the next remedy, for obtaining legal opinion and for appropriately drafting the petition by finding out the grounds therefore the litigants must be armed with such copy. Without the authentic copy being available the remedy in the higher forum or subsequent jurisdiction may be rendered a

> farce. All that sub-section(2) of Section 12 of the Limitation Act says is the time requisite for obtaining the copy being excluded form computing the period of limitation, or, in other words, as we have put it hereinabove, the time requisite for obtaining the copy being added to the prescribed period of limitation and treating the result of addition as the period prescribed. In adopting this methodology it does not make any difference whether the application for certified copy was made within the prescribed period of limitation or beyond it. Neither is it so provided in sub-section (2) of Section 12 of the Limitation Act nor in principle we find any reason or logic for taking such a view.
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> 11. So far as the applicability of Section 5 of the Limitation act is concerned, the power of the court to extend the prescribed period of limitation on the ground of availability of sufficient cause for not preferring the appeal within the prescribed period, within the meaning of Section 5 of the Limitation Act, stands circumscribed by the limitation imposed on the power of the High Court by the proviso to sub-section (2) of Section 25 of the Act. The discretionary power to condone the delay in filing the revision can be exercised for condoning any delay which does not exceed one month over and above the period liable to be excluded from computing the period of limitation by reference to Sections 4 to 24 of the Limitation Act.

6. The learned Senior Counsel for the appellant submitted that there is distinction in extension of time under section 5 of the Limitation Act or similar provision in the Special Act and the exclusion of time

while making computation of limitation and in the light of the aforenoticed observations of the Supreme Court in India House, the view of the Division Bench of this Court in the case of H.M.P. Engineers Limited cannot be said to be correct view and requires reconsideration. We are not inclined to reopen the issue. In the light of categorical and specific decision of the Division Bench of this Court that the provisions of section 14 of the Limitation Act are not attracted to the petition under section 34 of the Act of 1996, the view taken by the learned Single Judge being in conformity with that view cannot be faulted.

7. Appeal is dismissed in limine.

(R.M.LODHA, J)

(D.G.KARNIK, J)